

to T in accordance with the exchange agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI, and T must take into account in computing T's income tax liability for 2008 the \$28,000 of interest earned on T's account.

*Example 7. Marketing fee paid to exchange facilitator.* (i) The facts are the same as in *Example 4*, except that at the end of each taxable year, B pays a marketing fee to QI for using B as its depository institution for exchange funds. The amount of the fee is based on the total amount of exchange funds QI has deposited with B during the year.

(ii) Under paragraph (c)(2)(ii)(A) of this section, no part of the marketing fee that B pays to QI is earnings attributable to T's exchange funds. Therefore, all of the earnings attributable to the exchange funds are paid to T in accordance with the exchange agreement, and paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI, and T must take into account in computing T's income tax liability for 2008 the \$28,000 of interest earned on T's account.

*Example 8. Stated rate of interest on account less than earnings attributable to exchange funds.* (i) The facts are the same as in *Example 4*, except that the exchange agreement provides only that QI will pay T a stated rate of interest. QI invests the exchange funds and earns \$40,000. The exchange funds earn \$28,000 at the stated rate of interest, and QI pays the \$28,000 to T.

Month	Account's avg. daily bal.	T's avg. daily bal.	T's share* (percent)	Monthly interest	T's end. bal.**
May .....	\$5,275,000	\$2,100,000	39.8	\$17,583	\$2,106,998
June .....	5,292,583	2,106,998	39.8	17,642	2,114,020
July .....	5,643,558	2,114,020	37.5	18,756	2,121,054
August .....	5,035,647	2,121,054	42.1	17,472	2,128,410

\* T's Average Daily Balance ÷ Account's Average Daily Balance.

\*\* T's beginning balance + [(T's share) (Monthly Interest)].

(iv) On September 1, 2008, QI uses \$2,100,000 of the funds to purchase replacement property identified by T and transfers the property to T. QI pays \$28,410, the earnings of the account allocated to T's exchange funds, to T.

(v) Because QI uses a reasonable method to calculate the pro-rata share of account earnings allocable to T's exchange funds in accordance with paragraph (c)(2)(ii)(B) of this section, and pays all those earnings to T, paragraph (c)(2) of this section applies. The exchange funds are not treated as loaned from T to QI. T must take into account in computing T's income tax liability for 2008 the \$28,410 of earnings attributable to T's exchange funds.

(f) *Effective/applicability dates*—(1) *In general.* This section applies to trans-

(ii) Paragraph (c)(1) of this section applies and the exchange funds are treated as loaned from T to QI. QI must take into account in computing QI's income tax liability all items of income, deduction, and credit (including capital gains and losses) attributable to the exchange funds. Paragraph (c)(2) of this section does not apply because QI does not pay all the earnings attributable to the exchange funds to T. See §§1.7872-5 and 1.7872-16 for rules relating to exchange facilitator loans.

*Example 9. All earnings attributable to commingled exchange funds paid to taxpayer.* (i) The facts are the same as in *Example 4*, except that the exchange agreement does not specify how the \$2,100,000 QI receives from R must be invested.

(ii) On May 1, 2008, QI deposits the \$2,100,000 with B in a pre-existing interest-bearing account under QI's name and TIN. The account has a total balance of \$5,275,000 immediately thereafter. On the last day of each month between May and September, 2008, the account earns interest as follows: \$17,583 in May, \$17,642 in June, \$18,756 in July, and \$17,472 in August. On July 11, 2008, QI deposits \$500,000 in the account. On August 15, 2008, QI withdraws \$1,175,000 from the account.

(iii) QI calculates T's pro-rata share of the earnings allocable to the \$2,100,000 based on the actual return, the average daily principal balances, and a 30-day month convention, as follows:

fers of relinquished property made by taxpayers on or after October 8, 2008.

(2) *Transition rule.* With respect to transfers of relinquished property made by taxpayers after August 16, 1986, but before October 8, 2008, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income attributable to exchange funds.

[T.D. 9413, 73 FR 39620, July 10, 2008]

#### § 1.468B-7 Pre-closing escrows.

(a) *Scope.* This section provides rules under section 468B(g) for the current taxation of income of a pre-closing escrow.

(b) *Definitions.* For purposes of this section—

(1) A *pre-closing escrow* is an escrow account, trust, or fund—

(i) Established in connection with the sale or exchange of real or personal property;

(ii) Funded with a down payment, earnest money, or similar payment that is deposited into the escrow prior to the sale or exchange of the property;

(iii) Used to secure the obligation of the purchaser to pay the purchase price for the property;

(iv) The assets of which, including any income earned thereon, will be paid to the purchaser or otherwise distributed for the purchaser's benefit when the property is sold or exchanged (for example, by being distributed to the seller as a credit against the purchase price); and

(v) Which is not an escrow account or trust established in connection with a deferred exchange under section 1031(a)(3).

(2) *Purchaser* means, in the case of an exchange, the intended transferee of the property whose obligation to pay the purchase price is secured by the pre-closing escrow;

(3) *Purchase price* means, in the case of an exchange, the required consideration for the property; and

(4) *Administrator* means the escrow agent, escrow holder, trustee, or other person responsible for administering the pre-closing escrow.

(c) *Taxation of pre-closing escrows.* The purchaser must take into account in computing the purchaser's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the pre-closing escrow. In the case of an exchange with a single pre-closing escrow funded by two or more purchasers, each purchaser must take into account in computing the purchaser's income tax liability all items of income, deduction, and credit (including capital gains and losses) earned by the pre-closing escrow with respect to the money or property deposited in the pre-closing escrow by or on behalf of that purchaser.

(d) *Reporting obligations of the administrator.* For each calendar year (or portion thereof) that a pre-closing escrow is in existence, the administrator must

report the income of the pre-closing escrow on Form 1099 to the extent required by the information reporting provisions of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code and the regulations thereunder. See § 1.6041-1(f) for rules relating to the amount to be reported when fees, expenses, or commissions owed by a payee to a third party are deducted from a payment.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* P enters into a contract with S for the purchase of residential property owned by S for the price of \$200,000. P is required to deposit \$10,000 of earnest money into an escrow. At closing, the \$10,000 and the interest earned thereon will be credited against the purchase price of the property. The escrow is a pre-closing escrow. P is taxable on the interest earned on the pre-closing escrow prior to closing.

*Example 2.* X and Y enter into a contract in which X agrees to exchange certain construction equipment for residential property owned by Y. The contract requires X and Y to each deposit \$10,000 of earnest money into an escrow. At closing, \$10,000 and the interest earned thereon will be paid to X and \$10,000 and the interest earned thereon will be paid to Y. The escrow is a pre-closing escrow. X is taxable on the interest earned prior to closing on the \$10,000 of funds X deposited in the pre-closing escrow. Similarly, Y is taxable on the interest earned prior to closing on the \$10,000 of funds Y deposited in the pre-closing escrow.

(f) *Effective dates—(1) In general.* This section applies to pre-closing escrows established after February 3, 2006.

(2) *Transition rule.* With respect to a pre-closing escrow established after August 16, 1986, but on or before February 3, 2006, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the escrow or a reasonable, consistently applied method for reporting the income.

[T.D. 9249, 71 FR 6202, Feb. 7, 2006]

**§ 1.468B-8 Contingent-at-closing escrows. [Reserved]**

**§ 1.468B-9 Disputed ownership funds.**

(a) *Scope.* This section provides rules under section 468B(g) relating to the current taxation of income of a disputed ownership fund.